(1) Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

IN THE SUPREME COURT OF
THE UNITED STATES
October Term 2000

JOHN W. MEDLOCK,

Petitioner,

v.

TANA WOOD,

Respondent.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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71 pp

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QUESTIONS PRESENTED

Petitioner was questioned by Canadian police about a Spokane, Washington homicide. The Canadian police interrogated petitioner for the purpose of relaying information about the homicide to the Spokane authorities. Shortly after the initial interrogation session, Spokane police became involved in the questioning of petitioner and obtaining of evidence.

(1) Since the Canadian police were acting with the specific purpose of assisting the Spokane police in an American criminal case, should petitioner have been given the warnings required by *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)?

(2) Should petitioner have been given the *Miranda* warnings because the Spokane police actively joined in and participated in the investigation shortly after it began?

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I. *PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.*

Petitioner John W. Medlock respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

II. *OPINIONS BELOW.*

This is a habeas corpus proceeding. The memorandum decision of the Ninth Circuit affirming the District Court's dismissal of Mr. Medlock's habeas corpus petition is noted at 221 F.3d 1348 (May 18, 2000) (App. *infra*, pp. A1-A4). The District Court's decision is unreported.

The opinion of the Washington State Court of Appeals affirming Mr. Medlock's conviction in his direct appeal is reported *sub. nom. State v. Medlock*, 86 Wn. App. 89, 935 P.2d 693 (1997). The order of the Washington Supreme Court denying Mr. Medlock's petition for review is noted at 133 Wn.2d 1012, 946 P.2d 402 (1997).

III. *JURISDICTION*

The memorandum decision of the Ninth Circuit affirming the District Court's dismissal of Mr. Medlock's habeas corpus petition was entered on May 18, 2000. The

Circuit's order denying Mr. Medlock's petition for rehearing and petition for rehearing *en banc* was filed August 18, 2000. App. pp. B1, B2.

This petition is timely filed. This Court has jurisdiction pursuant to Title 28, United States Code, § 1254(1).

IV. *CONSTITUTIONAL PROVISIONS INVOLVED*

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Section 1 of the Fourteenth Amendment provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

> state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

V. *STATEMENT OF THE CASE*

A. *Proceedings in the Washington State Courts*

Mr. Medlock was charged in a Washington State trial court with first degree felony murder. At trial, he moved to suppress statements he made to Canadian authorities, contending that the statements were obtained in violation of the rules set forth in *Miranda v. Arizona, supra*. All of petitioner's pretrial motions were denied.[1]

Petitioner was convicted. The conviction was affirmed by the state Court of Appeals and review was denied by the Washington Supreme Court. *State v. Medlock*, 86 Wn. App. 89, 935 P.2d 693, *rev. denied*, 133 Wn.2d 1012, 946 P.2d 402 (1997).

B. *Summary of Habeas Corpus Proceedings*

Petitioner timely filed a petition for a writ of habeas corpus, raising the same federal claims previously litigated in the state courts. The District Court granted the prison warden's motion to dismiss the habeas petition. The court

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[1] *See* Findings of Fact and Conclusions of Law, *State v. Medlock*, Spokane County Superior Court, App. pp. D1 to D15.

rejected petitioner's claims, with one exception: the court found that petitioner suffered a *Miranda* violation when the Canadian police questioned him at the request of a Spokane police detective without advising him of his *Miranda* rights. However, the District Court held that the *Miranda* violation was harmless error.[2] The Ninth Circuit affirmed.[3]

C. *Summary of Material Facts*

The material facts are summarized in the District Court's order granting the prison warden's motion to dismiss, App. C1 to C17.

On December 28, 1993, petitioner's mother contacted local police (the Port Moody police department in British Columbia) to report that her son was suicidal. Constable Sarna observed Mr. Medlock driving his car and pulled him over. Sarna asked Mr. Medlock if he really wanted to kill himself; Mr. Medlock replied that he did. When asked why, petitioner responded that he had killed someone on Spokane, Washington.

Constable Sarna placed petitioner under arrest for investigation of the Spokane homicide. "Petitioner had not at that point violated any Canadian law that would justify

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[2] Order Granting Motion to Dismiss, pp. 11-12, App. pp. C18, C19.

[3] Memorandum Decision, App. pp. A1 to A4.

his detention and the officers' actions were undertaken for the benefit of the Spokane police."[4]

Corporal Dunn of the Port Moody police instructed Constable Sarna to handcuff him. Corporal Dunn considered the matter to be a joint investigation between the Port Moody police department and the Spokane police department. That department had quite often cooperated and assisted American agencies in criminal investigations.

Mr. Medlock was transported to the Port Moody police station and questioned by Corporal Dunn in the presence of Constable Sarna. All questions in the interrogation were about the Spokane homicide. Mr. Medlock confessed.

As the District Court found, Corporal Dunn had a unilateral wish to assist Spokane police in the murder investigation. "To that end, he interrogated petitioner for the purpose of relaying information to Spokane."[5]

After Mr. Medlock was put in the holding cell, Corporal Dunn called the Spokane police department and spoke with Detective Giese. Detective Giese asked

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[4] Order Granting Motion to Dismiss, p. 6, App. pp. C9, C10.

[5] Order Granting Motion to Dismiss, p. 6, App. p. C9.

Corporal Dunn to ascertain the address of the storage locker in which the murder weapon was hidden, and the location of the key to the locker. Corporal Dunn complied. Petitioner was questioned. He provided the address of the storage locker and gave the Port Moody police authorization to retrieve the key to the locker from his mother, who lived in Port Moody. Corporal Dunn relayed petitioner's response back to Detective Giese. Corporal Dunn was aware that Detective Giese's purpose in obtaining this information was to obtain search warrants. Dunn offered to assist the Spokane authorities in such manner as he could, referring the detective to several other Port Moody counterparts who could provide further assistance.[6]

The District Court held that the statements made by Mr. Medlock after Corporal Dunn spoke with Detective Giese were obtained in violation of *Miranda*, but held that the error was harmless.

The District Court had jurisdiction over Mr. Medlock's habeas corpus petition pursuant to Title 28, United States Code, §§ 2241 and 2254. The Ninth Circuit Court of Appeals had jurisdiction over Mr. Medlock's

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[6] Order Granting Motion to Dismiss, p. 7, App. pp. C11, C-12.

appeal of the dismissal of his petition pursuant to Title 28, United States Code, § 2253.

VI. *REASONS FOR ALLOWANCE OF THE WRIT*

The Ninth Circuit Court of Appeals decided an important federal question in this case in a way that conflicts with relevant decisions of this Court. Rule 10(c), Supreme Court Rules.

In *Miranda v. Arizona, supra*, this Court established "concrete constitutional guidelines for law enforcement agencies and courts to follow". *Miranda*, 384 U.S. at 442, 86 S. Ct. 1602.

> Those guidelines establish that the admissibility in evidence of any statement given during custodial interrogation of a suspect would depend on whether the police provided the suspect with four warnings. These warnings (which have come to be known colloquially as "*Miranda* rights") are: a suspect "has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed to him prior to any questioning if he so desires.

Dickerson v. United States, -- U.S. --, 120 S. Ct. 2326, 2331, 147 L. Ed. 2d 405 (2000), *quoting, in part, Miranda, supra*, 384 U.S. at 479.

"... *Miranda* and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts." *Dickerson, supra*, 120 S. Ct. at 2329. *Miranda* is a constitutional decision. *Ibid.*

All of Mr. Medlock's statements to the Canadian authorities should have been excluded under *Miranda*. This is true for the following reasons.

First, *Miranda* should apply to all of petitioner's statements because the sole purpose of the Port Moody police interrogation was to assist the Spokane police. There was no violation of Canadian law involved here. Mr. Medlock was placed under arrest in order to investigate the Spokane homicide. The police interrogated Mr. Medlock for the purpose of relaying information to Spokane. The officers' actions were undertaken for the benefit of the Spokane police.

Second, *Miranda* should apply because the Spokane police joined in and adopted the investigation begun by the Port Moody police. The District Court and the Ninth Circuit agreed with this proposition once there was direct contact between the two agencies, but refused to apply *Miranda* to the confession made by Mr. Medlock to Corporal Dunn and Constable Sarna prior to the phone call

from Spokane. The Ninth Circuit and the District Court required proof of an agency relationship as a predicate to application of *Miranda*. We respectfully suggest that this approach conflicts with *Miranda* and its progeny.

The better approach is contained in this Court's decision in *Lustig v. United States*, 338 U.S. 74, 69 S. Ct. 1372, 93 L. Ed. 2d 1819 (1949).

In *Lustig*, a federal agent, Greene, suspected two defendants of violations of the counterfeiting statute. He looked through a keyhole of the suspects' room, but could see no evidence of any violation. The local police subsequently obtained arrest warrants under state law, searched the room, and discovered evidence. They subsequently contacted the federal agent to report what they had found. He went to the hotel room himself and examined items discovered by the local police. When the defendants returned, they were arrested and searched. All of the evidence eventually seized was turned over to the federal agent.

On these facts, this Court found that federal law applied because the federal agent joined in the local authorities' search. Justice Frankfurter, writing for the Court, stated:

> It surely can make no difference whether a state officer turns up the evidence and hands

it over to a federal agent for his critical inspection with the view to its use in a federal prosecution, or the federal agent himself takes the articles out of a bag. It would trivialize law to base legal significance on such a differentiation. Had Greene accompanied the city police to the hotel, his participation could not be open to question even though the door of Room 402 had not been opened by him. *See Johnson v. United States*, 333 U.S. 10, 68 S. Ct. 367, 92 L. Ed. 436. *To differentiate between participation from the beginning of an illegal search and joining it before it had run its course, would be to draw too fine a line* in the application of the prohibition of the Fourth Amendment as interpreted in *Byars v. United States, supra*, 273 U.S. 28, 47 S. Ct. 248, 71 L. Ed. 520.

The crux of that doctrine is that a search is a search by a federal official if he had a hand in it .... The decisive factor in determining the applicability of the *Byars* case is the actuality of a share by a federal officer in the total enterprise of securing and selecting evidence by other than sanctioned means. *It is immaterial whether a federal agent originated the idea or joined in it while the search was in progress. So long as he was in it before the object of the search was completely accomplished, he must be deemed to have participated in it.*

Lustig, 338 U.S. at 78-79, 69 S. Ct. at 1374 (emphasis added).

In the later "Silver Platter Doctrine" case of *Elkins v. United States*, Justice Frankfurter explained that under the doctrine, the

> ... question has always been whether the offending search or seizure was conducted *in any part by federal officers or in the interest of the Federal Government*, or whether it was conducted *solely* by state officers acting *exclusively* for state purposes.

Elkins v. United States, 364 U.S. 206, 236, 80 S. Ct. 1437, 1455, 4 L. Ed. 2d 1669 (1960) (emphasis added).[7]

Lustig admittedly is a Fourth Amendment case. However, its approach is in harmony with *Miranda*'s exclusionary rule. Under this approach, there was sufficient American involvement, as well as intent by the Canadian police to aid the Spokane police, to require advisement of *Miranda* rights to Mr. Medlock if his

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[7] Justice Frankfurter dissented in *Elkins*. However, the *Elkins* majority did not dispute his statement of the law quoted here.

statements to the Canadians and physical evidence derived therefrom were to be admitted at his Spokane trial. Proof of formal agency is not required.

Third and finally, all of Mr. Medlock's statements to the Canadian authorities should have been inadmissible based upon the structure of the Fifth Amendment itself.

> The privilege against self-incrimination guaranteed by the Fifth Amendment is a fundamental trial right of criminal defendants. *See Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964). Although conduct by law enforcement officers prior to trial may ultimately impair that right, a constitutional violation occurs only at trial. *Kastigar v. United States*, 406 U.S. 441, 453, 92 S. Ct. 1653, 1661, 32 L. Ed. 2d 212 (1972).

United States v. Verdugo-Urquidez, 494 U.S. 259, 264, 110 S. Ct. 1056, 1060, 108 L. Ed. 2d 222 (1990).

Under this analysis, the violation of Mr. Medlock's privilege against self-incrimination occurred when his unwarned statements to the Canadian authorities were introduced by the Washington authorities at his Spokane

trial. As noted above, *Miranda* and its progeny in this Court govern the admissibility of statements made during custodial interrogation in the state courts. *Dickerson, supra*. The admission of Mr. Medlock's unwarned statements at his trial violated the *Miranda* decision.

VII. *CONCLUSION*

This Court should grant the petition for writ of certiorari, reverse the judgment of the Court of Appeals, and remand the cause for further proceedings.

DATED this the 14th day of November, 2000.

Respectfully submitted,

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221 F.3D 1348 (Table)
Unpublished Disposition

(Cite as: 221 F.3d 1348, 2000 WL 642477 (9th Cir. (Wash.))

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit

John W. MEDLOCK, Petitioner-Appellant,
v.
Tana WOOD, Respondent-Appellee.

No. 99-35662
D.C. No. CV-98-00004-RHW.

Argued and Submitted May 3, 2000.
Decided May 18, 2000.

Appeal from the United States District Court for the Eastern District of Washington, Robert H. Whaley, District Judge Presiding.

Before RYMER and T.G. NELSON, Circuit Judges, and BROWNING, [FN2] District Judge.

FN2. The Honorable William D. Browning, United States District Judge for the District of Arizona, sitting by designation.

MEMORANDUM [FN1]

FN1. This disposition is not appropriate for the publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36.3.

**1 We have jurisdiction under 28 U.S.C. § 2253.

The undisputed facts before the state courts show that there was no contact between the Port Moody police and the Spokane police prior to the first interview with Medlock. Thus, there was neither "substantial involvement" by the Spokane authorities, nor an agency/joint-venture relationship between the Port Moody and Spokane police at the time of the first interview, and no *Miranda* warnings were therefore required before that interview. *See United States v. Covington*, 783 F.2d 1052, 1056 (9th Cir. 1985); *United States v. Emery*, 591 F.2d 1266, 1267 (9th Cir. 1978); *United States v. Chavarria*, 443 F.2d 904, 905 (9th Cir. 1971).

This changed, however, when Detective Giese of the Spokane Police Department requested the Port Moody Police Department to obtain and relay specific information from Medlock that was to be, and subsequently was, used to obtain a search warrant. This request for specific information not only created an agency/joint-venture relationship between the Canadian and Spokane authorities, but also created substantial involvement by the Spokane authorities. *Miranda* warnings were therefore required

before any more questions could be asked of Medlock. *See Covington*, 783 F.2d at 1056; *Emery*, 591 F.2d at 1267.

Thus, the state court's decision that it was not error to admit Medlock's statements (and evidence obtained as a result of those statements) was based on an unreasonable determination of fact only to the extent that the court found that there was "no knowledge, cooperation, or assistance between the two agencies," after the point in time that Detective Giese affirmatively asked the Port Moody Police Department for assistance in obtaining information from Medlock. *State v. Medlock*, 935 P.2d 693, 696 (Wash. Ct. App. 1997). This does not, however, mean that Medlock is entitled to habeas relief.

The only statements Medlock made to the Port Moody police after the contact with Detective Giese were (1) the exact location of the storage locker that contained the murder weapon, and (2) the location of the key to that storage locker. If the state trial court had properly suppressed those statements and the evidence obtained as a result of those statements, at most, Medlock's statement as to the location of the murder weapon and perhaps the murder weapon itself would not have been admitted into evidence. In light of Medlock's multiple, detailed confessions that he killed the victim, together with the crime scene evidence obtained from the search of the motel room,

it cannot be said that the admission of the murder weapon and Medlock's statement as to the location of the murder weapon had a "substantial and injurious effect or influence" on the verdict. *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993). Habeas relief is not, therefore, available on this claim. *See id.*

AFFIRMED.

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN W. MEDLOCK,	)	No. 99-35662
	)	
Petitioner-Appellant,	)	D.C. No. CV-98-00004-RHW
	)	
v.	)	
	)	ORDER
TANA WOOD,	)	
	)	
Respondent-Appellee,	)	Filed: August 18, 2000
	)	

Before: RYMER and T.G. NELSON, Circuit Judges, and BROWNING,[1] District Judge.

The panel has voted to deny appellant's petition for rehearing. Judges Rymer and T.G. Nelson vote to deny the petition for rehearing en banc and Judge Browning so recommends.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

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[1] The Honorable William D. Browning, United States District Judge for the District of Arizona, sitting by designation.

The petition for rehearing and the petition for rehearing en banc are DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN W. MEDLOCK, Petitioner, v. TANA WOOD, Respondent.	)	NO. CS-98-004-RHW **ORDER GRANTING MOTION TO DISMISS**

Before the Court is Respondent's Motion to Dismiss. Petitioner is represented by John R. Muenster, Respondent by Assistant Attorney General Paul D. Weisser. The matter was considered without oral argument.

BACKGROUND

The facts are set out in *State v. Medlock*, 86 Wn. App. 89, 92-95, *review denied*, 133 Wash. 2d 1012 (1997). Because Petitioner does not agree with all of those facts, the areas necessary to disposition will be examined, first summarily as an overview, and then in more detail as the issues are individually addressed.

On December 28, 1993, Petitioner's mother contacted local police to report that her son was suicidal.

Exhibit 8, Finding II(2).[1] "Local police" in this context means the Port Moody Police Department in British Columbia. Constable Sarna observed Petitioner in his vehicle and pulled him over. ***Id.*, Finding II(3).** He asked if Petitioner really wanted to kill himself, to which Petitioner replied that he did. ***Id.*, Finding II(4)**. Pressed for a reason, Petitioner responded that he had killed someone in Spokane, Washington. **Exhibit 11 at 18**.

The Port Moody authorities contacted their counterparts in Spokane. Spokane police identified the probable victim as Rebecca Hedman, whose naked body was found on the banks of the Spokane River two months earlier. Spokane police traveled to British Columbia to interview Petitioner. In the meantime, Port Moody authorities had already questioned him. Petitioner made a full confession, and signed (and corrected) interrogation notes at the end of the interview. ***Id.*, Exhibit 3 at 157**. It is uncontroverted that the Canadian police did not read Petitioner his *Miranda* rights. **Exhibit 8, Finding II(6)**. However, they did read him his "Charter" rights, both at the time of the initial detention and again prior to questioning at

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[1] Unless otherwise indicated, all citations to the record are found at **Ct. Rec. 12**.

the police station.[2] ***Id.*, Findings II(4)&(6); Exhibit 11 at 21, 24, 29.** Because the murder occurred in the United States, police also offered to put Petitioner in contact with an American lawyer. **Exhibit 11 at 22.** Prior to the stationhouse interview, police also offered to allow Petitioner to call his mother, which he declined. ***Id.* at 94; Exhibit 3 at 156.** In addition, Petitioner was advised that he did not have to speak to the police, and that anything he said would be used as evidence. **Exhibit 11 at 29.**

Petitioner was detained from the time of his initial contact with Constable Sarna forward. He was held under British Columbia's Mental Health Act, and also told he was the subject of a homicide investigation. Information

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[2] British Columbia's analog to *Miranda* requires the following warning:

> It is my duty to inform you that you have the right to retain and instruct counsel without delay. You may call any lawyer you want. A Legal Aid duty lawyer is available to provide legal advice to you without charge and can explain the Legal Aid plan to you. If you wish to contact a Legal Aid duty lawyer, I can provide you with a telephone number. Do you understand that?

Exhibit 11 at 22.

developed by the Port Moody police and relayed to Spokane proved sufficient to obtain several search warrants, and the resulting searches yielded evidence of where the murder occurred, and recovery of the instrument used to bludgeon the victim to death. **Exhibit 8, Finding II(11).** The Spokane County prosecutor made a charging decision on December 30, 1993, and faxed an arrest warrant to the Spokane officers who were already in Port Moody. ***Id.*, Finding II(12).** When Spokane police interviewed Petitioner later that same day, together with a representative of the Port Moody police, they did not advise him that a murder charge had already been filed, and that Canada had already issued an extradition arrest warrant. ***Id.*** The most important new information developed during this interrogation was Petitioner's admission that he regained the $50 he had paid for the victim's services or, in other words, that he robbed her. ***Id.* Finding II(13).** At all times throughout this period, Petitioner consistently rejected repeated suggestions that he might wish to seek the advice of counsel. ***Id.*, Findings II(4),(6)&(14); Exhibit 11 at 22, 23, 24, 29.**

After Petitioner's extradition and return to Spokane, the prosecutor amended the information to charge first degree felony murder with robbery as the predicate felony

or, alternatively, second degree felony murder with assault as the felony.[3] **Exhibit 1.** Petitioner was convicted on the first degree felony murder charge. He seeks habeas relief on the following grounds.

1. The trial court erred in refusing to suppress non-Mirandized statements made to the Canadian authorities, as well as evidence derived therefrom.

2. The trial court erred in refusing to suppress statements made to Spokane police.

3. The trial court erred in refusing to suppress Petitioner's statement regarding the robbery on corpus delicti grounds.

4. The trial court erred in refusing to dismiss the amended information on specificity grounds.

DISCUSSION

Several preliminary matters bear notation. First, habeas relief is available only when a petitioner alleges he is "in custody in violation of the Constitution or laws or treaties *of the United States*." 28 U.S.C. § 2254(a) (emphasis added). State authorities may on occasion be illuminating, but have no force of their own in the habeas

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[3] Under Washington's statutory scheme, robbery will support a first degree felony murder charge, but assault will not. *Compare* RCW §§ 9A.32.030(1)(c) with 9A.32.050(1)(b).

context.[4] "[I]t is not the province of a federal habeas corpus court to reexamine state-court determinations or state-law questions." *Smith v. Stewart*, 140 F.3d 1263, 1272 (9th Cir.), *cert. denied*, 119 S. Ct. 336 (1998) (quoting, *Estelle v. McQuire*, 502 U.S. 62, 67-68 (1991)).

Second, Respondent concedes that the issues presented have been fully and fairly presented to the State's highest court, and are thus exhausted.

Third, the ground rules changed significantly upon adoption of the Antiterrorism and Effective Death Penalty Act of 1996 ["AEDPA"]. Factual determinations made in state proceedings, at either the trial or appellate level, are presumed correct. 28 U.S.C. § 2254(e)(1). They will be set aside on federal habeas review only if a petitioner proves them incorrect by clear and convincing evidence. *Id.* As to legal determinations, they too are binding unless "the decision was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." Section 2254(d)(1). Law is "clearly established" if set forth in a true holding, as opposed to dicta. *Moore v. Calderon*,

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[4] No one should feel singled out by this comment. Both Petitioner and Respondent resort to state law when it is more favorable than federal.

108 F.3d 261, 265 (9th Cir. 1997). The reference to the Supreme Court as the sole source of federal law for habeas purposes was deliberate. *Id.* At 264 ("state court decision may not be overturned on habeas review ... because of a conflict with Ninth Circuit-based law").

A. Statements to Canadian authorities

Medlock, supra, held that the Canadian authorities were only required to abide by their own law, and not that of Washington or the United States. 86 Wash. App. at 95-96. Generally, the exclusionary rule does not operate extraterritorially. *United States v. Covington*, 783 F.2d 1052, 1056 (9th Cir. 1985) (quoting, *United States v. Chavarria*, 443 F.2d 904, 905 (9th Cir. 1971)). *Cf., United States v. Wolf*, 813 F.2d 970, 972 n.3 (9th Cir. 1987) (noting unsettled state of law in due process context). The rationale for the rule is deterrence, which is likely to be served when the objectionable conduct is that of a foreign police agency rather than domestic.

> *Miranda* was intended as a deterrent to unlawful police interrogations. When the interrogation is by the authorities of a foreign jurisdiction, the exclusionary rule has little or no effect upon the conduct of foreign police. Therefor, so long as the trustworthiness of the confession satisfies legal standards, the fact that the defendant was not given *Miranda* warnings before questioning by foreign police

> will not, by itself, render his confession inadmissible.

United States v. Emery, 591 F.2d 1266, 267 (9th Cir. 1978) (quoting, *Chavarria, supra,* 443 F.2d at 905).

An exception lies when police in the United States are themselves operating extraterritorially; *i.e.*, when they are physically present in the foreign jurisdiction, or are using foreign police as instruments of their own investigation. *Covington, supra*, 783 F.2d at 1056; *Emery, supra*, 591 F.2d at 1268. A second exception may lie when police conduct "shocks] the [judicial] conscience." *United States v. LaChapelle*, 869 F.2d 488, 490 (9th Cir. 1989); *accord, United States v. Barona*, 56 F.3d 1087, 1091 (9th Cir. 1995).

Starting with the easier inquiry, there is no evidence of shocking conduct. Constable Sarno read Petitioner his Charter rights and Corporal Dunn took pains to ensure that Petitioner understood that warning. **Exhibit 11 at 29.** The police went further and virtually completed the *Miranda* warning by advising Petitioner that he could remain silent and anything he said would be used against him. ***Id.*** The only feature lacking to complete the *Miranda* warning was express advice that Petitioner could have a lawyer present during interrogation. Petitioner was asked numerous times

whether he desired an attorney, and on each occasion he declined. **Exhibit 11 at 22, 23, 24, 29.**

The agency question is more difficult. The events must be compartmentalized to determine if and when such a relationship came into being. There was no such relationship when Petitioner blurted out his confession initially. The officers had no idea there had been a murder in Spokane two months earlier. ***Id.*** **At 35, 74, 85.** Moreover, had Petitioner been stopped under similar circumstances in Spokane, no *Miranda* warning need have been given. The outburst was spontaneous, and not made in response to interrogation. *Miranda v. Arizona*, 384 U.S. 486, 478 (1966). Petitioner was not then in custody, although having made the startling disclosure he did, it was probably foreordained that he would at some point have an opportunity to discuss the matter with Spokane authorities.

Corporal Dunn had a unilateral wish to assist Spokane police if, in fact, a murder had been committed. **Exhibit 11 at 89-90.** To that end, he interrogated Petitioner for the purpose of relaying information to Spokane. ***Id.***; **Exhibit 3 at 171-73.** Constable Sarno evidenced the same desire when he placed Petitioner under arrest for an investigation of a homicide in Spokane. **Exhibit 11 at 75.** Petitioner had not at that point violated any Canadian law

that would justify his detention and the officers' actions were undertaken for the benefit of the Spokane police.[5] **Exhibit 3 at 178-79.**

But an agency relationship requires a meeting of the minds. *Scott v. Ross*, 140 F.3d 1275, 1281 (9th Cir.), *cert. denied*, 1999 WL 150809 (March 22, 1999), citing, *Nordstrom Credit v. Department of Rev.*, 120 Wash. 2d 935, 941 (1993). The principal must have the right to exercise control over the agent. *Id.* These requirements cannot be met when an ostensible agent undertakes action without the knowledge or consent of his principal. Corporal Dunn's interrogation occurred over the span of about a half hour prior to his contact with Spokane police. **Exhibit 8, Finding II(6).** Constable Sarno never had direct contact with Spokane police. An agency relationship could not have arisen until Corporal Dun contacted Spokane Detective Giese after the initial interview. Petitioner had already done himself a lot of damage at that point. His confession was specific and detailed. **Exhibit 11 at 94-95**. All Spokane police would learn through further interrogation was the

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[5] Although Constable Sarno believed that Petitioner's expression of suicidal ideation provided adequate grounds for taking him into custody under the Mental Health Act. **Exhibit 11 at 23.**

exact location of the murder weapon, and that Petitioner had robbed the victim of $50. ***See* Exhibit 4 at 253.**

Things become stickier upon the contact with Detective Giese. Corporal Dunn advised that Petitioner had disclosed the nature of the murder weapon and its general location. Detective Giese asked Corporal Dunn to ascertain the address of the storage locker in which Petitioner hid the weapon, and the location of the key to the locker. **Exhibit 11 at 96; Exhibit 3 at 175; Exhibit 4 at 227.** Corporal Dunn complied, asked Constable Sarno to make inquiry, and relayed Petitioner's response back to Detective Giese. **Exhibit 3 at 175-76; Exhibit 4 at 227.** This time, Petitioner was able to provide a precise address, and gave Port Moody police authorization to retrieve the key from his mother, who lived in Port Moody. **Exhibit 11 at 31-32.** Corporal Dunn was aware that Detective Giese's purpose in obtaining this information was to obtain search warrants. **Exhibit 3 at 177-78; *see also*, Exhibit 11 at 98.** Corporal Dunn told Detective Giese that he could hold Petitioner for only 72 hours under the Mental Health Act, and that thereafter, he would no longer have authority to detain him because Petitioner had not broken any local laws. **Exhibit 3 at 178-79.** Corporal Dunn offered to assist Spokane authorities in such manner as he could, referring the

detective to several of his Port Moody counterparts who could provide further assistance. ***Id.* at 180-81.**

This certainly has the appearance of being the joint investigation Corporal Dunn thought it was. ***Id.* at 176.** Detective Giese balked at agreeing that this was a joint investigation. **Exhibit 4 at 273-74.** It was his investigation. ***Id.*** Nonetheless, he conceded that the two departments worked together and provided one another with information with the shared goal of building a prosecutable case. ***Id.* at 274-75.**

> Q I invite your attention to the night that you and Corporal Dunn are communicating with each other.
>
> A Yes.
>
> Q He tells you about what Mr. Medlock said. You indicated to him you were going to get search warrants for the storage locker and the motel, correct?
>
> A Yes.
>
> Q Okay. You asked him for more detailed information about the storage unit's address?
>
> A Yes.
>
> Q Okay. He then went and as we know, got Constable Sarna to go get that information to you, correct?

A Correct.

Q Then it was relayed back to you?

A Yes.

Q Okay. Then you used that to get the search warrant. Right?

A That's right.

***Id.* at 277-78.**

Even if characterized as a joint investigation, however, the only evidence subject to exclusion would be the statements made by Petitioner in response to the questions posed by Detective Giese through Corporal Dunn through Constable Sarno, and possibly the derivative evidence resulting from execution of the search warrant for the locker.[6] Petitioner's statements made prior to Detective

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[6] But not the results of the search warrant for Petitioner's motel room. Petitioner disclosed the name and address of the motel where the murder occurred prior to Detective Giese's involvement. **Exhibit 11 at 26.** As to use of the murder weapon found in the locker, the parties do not raise any issue over the "inevitable discovery" rule, and the Court expresses no opinion in that regard. *See United States v. Lang*, 149 F.3d 1044, 1047, *amended*, 157 F.3d 1161 (9th Cir. 1998), *pet. for cert. filed*, Jan 19, 1999; *United States v. Polanco*, 93 F.3d 555, 561 (9th Cir. 1996). Prior to Spokane involvement, the police did not have a precise address for the storage locker, but they

Giese's involvement would not be excludable, nor would evidence deriving from those statements. Petitioner's contention that, upon joining the investigation, the Spokane police became responsible for all that went on before is not an accurate statement of the law. This was a police investigation; not a criminal conspiracy. Petitioner invokes agency theory, but what he is really arguing is vicarious liability. Under Petitioner's theory, United States police could never make any use of evidence gained through foreign police. This would not be an easy feat to accomplish, because just knowing of the existence of the evidence might suggest some level of cooperation and joint participation.

The remaining questions are whether the state courts' agency findings amount to an unreasonable construction of the facts (§ 2254(d)(2)), and whether Petitioner has overcome the presumption of correctness by clear and convincing evidence (§ 2254(e)(1)). Agency is a question of fact. *Covington, supra*, 783 F.2d at 1056. The trial court found there was no agency relationship between Port Moody police and Spokane police on December 28, 1993.

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knew it was "west of Maple Street." **Exhibit 11 at 27-28.** To a Spokane detective, that information would narrow the target area considerably.

Exhibit 8, Conclusion II(5). The findings do not differentiate between the time frame prior to Corporal Dunn's contact with Detective Giese, and the time frame thereafter when, in response to Detective Giese's request, Petitioner was further interrogated to determine the location of the locker and the key to the locker. The same is true of *Medlock, supra*. The Washington State Court of Appeals, Division III, held that no agency relationship existed at the time of Constable Sarna's contact, or during Corporal Dunn's interview. 86 Wash. App. at 95. This was so because "at the time [Petitioner's] statements were made, there was no knowledge, cooperation, or assistance between the two agencies." *Id.* This determination is manifestly true prior to Detective Giese's involvement. It becomes suspect after he became involved. At that point, there was clearly a significant level of "knowledge, cooperation, [and] assistance between the two agencies."

The issue is the quantum of participation required to render the acts of the Port Moody police those of the Spokane police. There was not a great deal of *relevant* joint participation. What occurred by way of joint participation on December 29 and 30, 1993 might suggest a cooperative investigation, but none of this activity has any bearing on the confession. The only relevant joint participation

occurred shortly after 11:00 p.m. on December 28, 1993, when Detective Giese returned Corporal Dunn's call.

Habeas rulings adverse to the State always affect the public interest in finality of judgments, often adversely impact comity, and are much easier to accept when police conduct constitutes police misconduct. The societal interest in deterring oppression and other forms of malfeasance on the part of those charged with upholding the law offsets the costs. This is not such a case. The British Columbia authorities comported themselves professionally throughout their investigation. The Spokane authorities did not overreach, save for one brief moment on December 28. Detective Giese knew he could not interview Petitioner in Canada without following United States law, and he did not. He Mirandized Petitioner prior to interrogating him on December 30. He should have known he was also precluded from using the services of a third party to accomplish what he himself could not do. *Covington, supra*, 783 F.2d at 1056; *Emery, supra*, 591 F.2d at 1268. To illustrate the point, suppose that Detective Giese told Corporal Dunn, "Put him on the line. I need to ask him something." Can anyone doubt that the detective would know that the conversation must be preceded by a *Miranda* warning?

Perhaps it was an easy mistake to make. Had the call come from Oregon, or Florida, or any other jurisdiction in the United States, the detective would have done just what he did here, and he would have been safe in doing so. It would, in fact, have been insulting to ask the caller if the subject had been given his *Miranda* warnings. Dealing with a foreign jurisdiction, however, this was an inquiry that had to be made. It was not, and because Spokane police used Port Moody police to accomplish that which Spokane police could not do, Petitioner was subjected to a *Miranda* violation. In short, Petitioner has carried his burden under § 2254(e)(1) of showing by clear and convincing evidence that the state courts' factual determinations are not completely correct.

The Court has considered the voluntariness of the confession. Nothing in the record hints at coercion. A great deal in the record shrieks of a lack of coercion. The multiple confessions given to the Port Moody police were accompanied by Charter rights warnings, and the confession given to the Spokane authorities came after a *Miranda* warning. Petitioner declined numerous times to consult with counsel, or even call his mother. The point is mentioned only because the Fourth Circuit recently held that 18 U.S.C. § 3501 overruled *Miranda*, and that voluntariness is now the sole touchstone of admissibility. *United States v. Dickerson*,

166 F.3d 667, 684-87 (4th Cir. 1999). Assuming that *Dickerson* was rightfully decided, however, the point is an idle one. The statute refers by its own terms only to prosecutions brought by the United States or in the District of Columbia.

Petitioner suffered a *Miranda* violation. The questions is what to do about it. The facts may be amenable to analysis under *Oregon v. Elstad*, 470 U.S. 298, 318 (1985), but the better approach is to ask how Petitioner was prejudiced. It is well settled that Miranda violations are subject to harmless error analysis. *United States v. Polanco*, 93 F.3d 555, 562 (9th Cir. 1996); *United States v. Khan*, 993 F.2d 1368, 1376 (9th Cir. 1993). An error is harmless if a reviewing court is convinced "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Khan*, at 1376 (citation omitted). "To say that an error did not contribute to the verdict is ... to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." *Id.*, quoting *Yates v. Evatt*, 500 U.S. 391 (1991).

The best Petitioner could hope for on retrial is that neither the murder weapon nor his statements as to where it could be found would come into evidence. *See* note 6,

supra. This seems rather de minimis in the overall scheme of things, considering that the balance of the evidence, including Petitioner's detailed multiple confessions, would be admissible. The physical presence of the murder weapon might tend to cast a macabre pall, but the record suggests that the trial was not so much about murder as it was robbery, ***See* Exhibit 7 at 890-912** (Petitioner's closing argument). This was a question of damage control, not innocence of the murder itself. *See Pope v. Zenon*, 69 F.3d 1018, 1025 (9th Cir. 1995). It seems improbable that the excludable and potentially excludable evidence would have any bearing on whether the murder was accompanied by a robbery. The weight of the admissible evidence was so overwhelming that the incremental value of the inadmissible evidence, if any, amounted to harmless error.

B. Statements made to Spokane police

Detective Giese Mirandized Petitioner prior to the investigation on December 30, 1993. Petitioner does not contend otherwise. Petitioner's perceived flaw is that the interview occurred post-charging, and that *Miranda* rights standing alone do not imply the voluntary waiver of the Sixth Amendment right to counsel during post-charging proceedings. "In the State of Washington, formal judicial proceedings are fully commenced against a criminal defendant upon the filing of an information by a

prosecutor." *Norman Ducharme*, 871 f.2d 1483, 1487 n.2 (9th Cir. 1989). The problem with this contention is that the only Supreme Court decision cited by Petitioner defeats his argument. *Patterson v. Illinois*, 487 U.S. 285 (1988). *Patterson* raised and reserved the question of whether issuance of a charging document, standing alone, triggers a duty on the part of the police to inform the suspect of that fact. "Nor do we even pass on the desirability of so informing the accused -- a matter that can be reasonably debated." *Id.* at 295 n.8. This is not an "authoritative statement of federal law as declared by the Supreme Court" as required under the AEDPA. *See Norman, supra,* 871 F.2d at 1486-87 (noting that Supreme Court has not decided the issue). It is not even good dicta. Notably, *Medlock* relied on *Patterson* for the proposition that although an accused's Sixth Amendment rights attach upon filing charges, the attachment of such rights does not give rise to a heightened waiver standard. 86 Wash. App. at 99-100. It is difficult to conclude that *Medlock* contravened clearly established federal law by relying on the only Supreme Court decision even remotely on point.

C. Corpus delicti

Petitioner admitted during his December 30, 1993 interview with Spokane police that he took $50 from the

victim. He had given her the money in exchange for sexual services, but decided he had overpaid and wanted his money back. Robbery was the predicate for the first degree felony murder charge. According to Petitioner, absent his confession, there is no independent evidence of a robbery.

Petitioner urges that Washington still follows the traditional corpus delicti rule that an accused may not be convicted on his confession alone. That is open to question in the felony murder context, because the emerging rule is that the predicate felony is not subject to the traditional rule. *Medlock, supra*, 86 Wash. App. at 100. Whether true or not in Washington, however, it is certainly no longer true in the federal system. Corpus delicti is not a doctrine of constitutional magnitude. *West v. Johnson*, 92 F.3d 1385, 1393-94 (5th Cir. 1996). The constitutional inquiry is whether sufficient evidence exists that could convince any rational trier-of-fact of guilt. *Id.* The burden may be met if adequate evidence: (1) demonstrates that the "criminal conduct at the core of the offense" in fact occurred; and (2) such evidence tends to bolster the trustworthiness of a confession. *United States v. Lopez-Alvarez*, 970 F.2d 583, 589-92 (9th Cir. 1992). There is ample independent evidence that the murder occurred, and Petitioner's bizarre spontaneous confession bears inherent reliability as a powerful admission against interest. *See Id.*

Finally, Petitioner's position that there is no independent evidence of a robbery is not borne out by the record. As will be addressed further, Petitioner contends the charging document was so elastic that the State was able to raise a new robbery theory for the first time in rebuttal argument; *i.e.*, because the victim was found naked, Petitioner must have robbed her of her clothing. In point of fact, he did rob the victim of her clothing, and disposed of it in dumpsters. A rational juror would have been justified in finding that the robbery consisted of recovering the $50 (which is supported solely by the confession), or of both activities (which is supported by a combination of the confession and attendant circumstances).

D. Deficient notice

Petitioner contends that neither the first degree nor the second degree charge outlines the elements of the predicate felony with sufficient specificity to satisfy the Sixth Amendment right to notice. Count II may have problems in this regard. *Kreck v. Spaulding*, 721 F.2d 1229, 1232-33 (9th Cir. 1983).[7] However, Petitioner was not convicted of Count II, and any conclusions reached in

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[7] Although as Respondent accurately notes: "A state court decision may not be overturned on habeas review ... because of a conflict with Ninth Circuit-based law." *Moore, supra*, 108 F.3d at 264.

this regard would be wholly advisory. Count I is in a different posture. There are a number of diverse and sundry ways to commit second degree assault, the predicate offense in Count II; everything from using a deadly weapon, to injuring an unborn fetus, to recklessly inflicting substantial bodily harm, to administering poison, to exposing another person to HIV.[8] RCW § 9A.36.021. There are only three ways to commit first degree robbery, the predicate offense in Count I.

> (1) A person is guilty of robbery in the first degree if in the commission of a robbery or of [*sic*] immediate flight therefrom, he:
>
> (a) Is armed with a deadly weapon; or
>
> (b) Displays what appears to be a firearm or other deadly weapon; or
>
> (c) Inflicts bodily injury.

RCW § 9A.56.200.

The information is not a model of what a charging document should look like. **Exhibit 1**. It is as though the drafter deliberately set out to be as uncommunicative as the English language would allow. However, the availability of

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[8] This was true when Petitioner was convicted. Since then, exposing another to HIV has been deleted. 1997 Wash. Sess. Laws ch. 196, § 2.

habeas relief turns not only on a violation of federal law, but also on prejudice flowing from the violation. *O'Neal v. McAninch*, 513 U.S. 432, 434 (1995). The only prejudice alleged is that in closing rebuttal argument, the prosecution spring a new theory; *i.e.*, if the jury did not believe that Petitioner retrieved his $50 from the victim, it could believe that he robbed her of her clothes.[9] The "commission of a robbery" element is common to all three methods whereby first degree robbery may be committed. Petitioner claims a lack of notice of the elements, but what he is really arguing is a lack of notice of the State's theory of the case. Federal law does not require such disclosure.

Accordingly, **IT IS HEREBY ORDERED:**

1. Respondent's Motion to Dismiss (**Ct. Rec. 13**) is **GRANTED**.

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[9] The contention that this was a brand new theory launched for the first time in rebuttal is not supported by the record. In his initial closing, the prosecutor argued "And around 11:00 o'clock, after completely disrobing her, taking what remaining possessions, meager possessions that she had in this world, he placed her in the car." **Exhibit 7 at 882.**

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this order, enter judgment thereon, furnish copies to counsel, and close this file.

DATED this 12 day of April, 1999.

ROBERT H. WHALEY
United States District Judge

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IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON, Plaintiff, v. JOHN W. MEDLOCK, Defendant,	)	No. 95-1-00368-1 FINDINGS OF FACT CONCLUSIONS OF LAW RE: DEFENDANT'S MOTIONS TO DISMISS AND SUPPRESS EVIDENCE

This matter came before the Court for hearing May 8-10, 1995. The plaintiff was represented by Deputy Prosecuting Attorney for Spokane County, Steven J. Kinn. The defendant John W. Medlock was represented by John R. Muenster. The defendant moved:

(1) To suppress statements made by him to Canadian police officers and any evidence derived therefrom.

(2) To suppress statements and any evidence derived therefrom made to Spokane police detectives on December 30, 1993, and

(3) To suppress statements related to the alleged robbery on corpus delicti grounds, and

(4) Move to dismiss the amended information.

The Court took testimony and heard argument. Both parties filed memoranda of points and authorities. Now, therefore, the Court makes the following:

FINDINGS OF FACT

I. Disputed Facts

There are no disputed facts.

II. Undisputed Facts

(1) On October 18, 1993, the nude corpse of an adolescent female, later identified as thirteen (13) year old Rebecca Hedman was found on a riverbank of the Spokane River in the area of 4400 West Downriver Drive, near the grounds of the old Riverpark Convalescent Center. The investigation by homicide detectives, forensic testing, and the autopsy revealed that the victim had been murdered as a result of six (6) blunt impact injuries to the head and/or strangulation. The autopsy indicated vaginal damage to the victim contemporaneous with her death which suggested sexual activity. Forensic testing established that the body had been at the riverbank for not more than twenty (20) hours.

(2) On December 28, 1993, at about 9:30 p.m., the Port Moody, British Columbia Police Department received an emergency call from Beverly Medlock of 19 Mercier Road in Port Moody. Mrs. Medlock requested

police assistance to locate and prevent her son, John Medlock, from committing suicide.

(3) The Port Moody police obtained a vehicle description of the car Mrs. Medlock's son was driving and immediately broadcast the information to their patrol officers. Constable Sarna of the Port Moody Police Department heard the broadcast of the suicide call and observed Defendant John Medlock's car driving on St. John Street around 9:30 p.m. and followed the car a short distance into the Coquitlam area before stopping it.

(4) After approaching defendant in his car and informing him of the reason for the stop, defendant informed the constable that he indeed wanted to kill himself because he had killed someone in Spokane, Washington. Other police officers arrived at the scene of the stop a short time later, and defendant was advised by Constable Rae of his "Charter Rights" as required by Canadian constitutional law under Canada's Charter of Rights and Freedoms. Additionally, defendant was advised at this time that the constables would contact an American attorney to consult with him, since the defendant had indicated that he had killed someone in the United States. Defendant indicated that he did not wish to consult with either Canadian or American counsel. After being advised that he was being detained under British Columbia's Mental Health Act and

for a murder in Spokane, Washington, defendant was asked by Corporal Dunn if he would agree to go with them to the police department in Port Moody before going to the hospital to talk with police about the murder in Spokane. Defendant agreed to Corporal Dunn's request. He was not taken directly to a hospital.

(5) Port Moody police officers knew nothing about a murder in Spokane at this point. They observed that the defendant seemed withdrawn and depressed. Because of concerns about defendant's mental state, Corporal Dunn decided to interview defendant before turning him over to mental health officials to verify whether someone had been killed and whether a criminal agency had been involved in the death, as opposed to a lawful or accidental death.

(6) At approximately 10:00 p.m., defendant arrived at the Port Moody Police Department. He was escorted to an interview room where he gave enough of a statement for Corporal Dunn to contact Spokane police for verification. Prior to giving the statement, defendant was again reminded of his charter rights and given the opportunity to have police contact a Canadian or American attorney for him. He was not advised of his rights under the Fifth Amendment to the U.S. Constitution. Defendant declined the opportunity to contact an attorney and indicated his desire to continue with the interview. The interview

lasted from approximately 10:00 p.m. to 10:27 p.m. In the course of the interview the defendant indicated that he had murdered a prostitute by the name of Rebecca Hedman in Spokane, Washington, by beating her a half dozen times with a baseball bat in the head while in his room at the Ranch Motel. He then dumped the body along the Spokane River near the site of a former convalescent home. At the conclusion of the interview the defendant was once again reminded of his charter rights and given the opportunity to have an attorney contacted to provide legal advice. Defendant declined to seek the assistance of counsel at this time and was taken to a holding cell.

(7) While Corporal Dunn was interviewing the defendant, Constables Rae and Gagnier were dispatched to Mrs. Medlock's residence to inform her that her son was safe and was being detained under the Mental Health Act as well to obtain details from her that led up to her call to the police.

(8) Between 10:30 p.m. and 11:00 p.m. Corporal Dunn attempted to contact someone at the Spokane Police Department to obtain information to verify defendant's story. At approximately 11:00 p.m. Detective Geise of the Spokane Police Department called Corporal Dunn and verified that a Rebecca Hedman had been murdered in Spokane, Washington. After hearing the details of

defendant's statement to Corporal Dunn, Detective Geise was convinced that defendant was a viable suspect in the murder. He obtained information about the general location of the storage locker where defendant had said he had placed the murder weapon as well as the location of the motel room where defendant said he murdered Rebecca Hedman. A general discussion ensued about procedures for detaining a defendant in Canada for an offense committed in the United States.

(9) Defendant was transported to the emergency unit of the Royal Columbian Hospital where he was seen by Dr. Freeman shortly after midnight. Dr. Freeman certified that defendant be detained under the Mental Health Act.

(10) Detective Geise contacted Detective Lylack of the Port Moody Police Department on December 29, 1993. Detectives Lylack and Geise discussed the procedures for arresting defendant in Canada. Detective Geise also informed Detective Lylack of his efforts in obtaining search warrants for the Ranch Motel room where defendant said he had done the murder and the storage locker where the defendant had told Canadian police he had hid the murder weapon.

(11) Search warrants were served at the Ranch Motel and the Ace for Space storage facility on December 29, 1995. A search of the motel room that records

indicated the defendant had rented during the period of the murder revealed blood stains of human origin. A search of the storage facility resulted in the location of a baseball bat with blood stains of human origin. Storage facility records also indicated that defendant had entered the facility a few days after the murder. The evidence obtained from the searches along with defendant's statements to Canadian officers were used to seek a complaint for first degree murder.

(12) On the evening of December 29, 1993, Detectives Geise and Peterson of the Spokane Police Department flew to Vancouver, British Columbia to interview defendant. After arriving in Vancouver they were advised that a formal complaint and arrest warrant were obtained charging defendant with first degree murder. With this information an extradition warrant was obtained for the arrest and detention of defendant. Mr. Medlock was not advised by either Canadian or American authorities that an arrest warrant had been issued by a Canadian judge; that he was charged with first degree murder in Spokane; that an arrest warrant had been signed and bond set by judicial officers in Spokane. He was not advised that he had a right to be represented by a lawyer specifically on a murder charge pursuant to the Sixth Amendment and Washington State Criminal Rules. After the extradition warrant was

obtained for defendant's arrest, the detectives went to interview the defendant at the Royal Columbian Hospital in the early evening hours of December 30, 1993. At approximately 7:00 p.m., the interview began with Detective Lylack introducing himself and the American officers and indicating that they were there to interview defendant concerning the murder of Rebecca Hedman in Spokane, Washington on October 17-18, 1993. Defendant was once again advised of his rights under the Canadian Charter which he once again indicated that he understood and waived. Detective Peterson then advised the defendant of his constitutional rights under the Miranda decision. Defendant indicated that he understood those rights and waived them.

(13) Over the course of the next hour, the defendant proceeded to confess for a second time to the murder of Rebecca Hedman. In addition to the information already provided to Canadian officers, defendant informed officers that he had been at the horse races for most of the afternoon and had actually obtained approximately $39 in winnings from one of the races. He decided to pick up a prostitute and went to the area of Second and Madison in Spokane, Washington. There, he picked up Rebecca Hedman and paid her $50 to have sexual relations with him. He indicated that they went back to this motel room where

they had sexual intercourse. Defendant described the intercourse as "normal". He additionally indicated that since he had no condom available, he had improvised by placing a sandwich baggie around his penis and attaching a rubber tie (which females use to hold a ponytail) at the base of the baggie. After intercourse, defendant was unhappy with the quality of the sex and additionally with the fact that the victim demanded to be taken back downtown. He indicated to the police that he wanted his money back. The victim was sitting on the bed with her back to the defendant, who was also on the bed. Defendant reached under the bed for a baseball bat he kept hidden and struck the victim in the back of her head. Defendant continually struck the victim in the head approximately six (6}times. She fell to the foot of the bed where he became alarmed since she was bleeding profusely on the floor. Defendant reached in the victim's sock and retrieved his money, carried the victim to his bathtub where he removed all of her clothing, and washed her off. He then slept into the evening hours waiting for a safe time to dump the body. He dumped the body in the area indicated to the Canadian police and returned home.

(14) After giving his statement to the American officers, the defendant was arrested on the Canadian Extradition Warrant and placed in police custody. He was escorted back to the Port Moody holding facility where he

was once more given an opportunity to contact legal counsel. Once more, defendant declined the assistance of counsel.

Based on the above findings of fact, the Court makes the following Conclusions of Law:

CONCLUSIONS OF LAW

I.

The Court has jurisdiction over the parties and the subject natter.

II.

Defendant's motion to suppress statements made to Canadian police officers and evidence derived therefrom is denied for the following reasons:

(1) Defendant's initial detention under British Columbia's Mental Health Act was proper. Based upon Mrs. Medlock's initial call to the Port Moody Police Department that defendant was suicidal as well as defendants own manifestations that he wished to do himself harm to Canadian officers in conjunction with their observations of his depressed appearance gave them good reason to stop and detain the defendant on the grounds that defendant seemed to be suffering from a mental disorder. This Court adopts the Canadian Court's definition of a mental disorder or illness at defendant's June, 1994 extradition hearing:

> "one that is suffering from a disorder that seriously impairs his ability to act appropriately in his environment and that requires supervision for this protection."

This Court finds that defendant was suffering from a disorder that seriously impaired his ability to act appropriately in his environment and that he required supervision on December 28, 1993 when stopped by Canadian officers.

(2) The Court finds that defendant was adequately advised of his charter rights by Canadian law enforcement officers and knowingly and freely waived those rights in the absence of any coercion before being interviewed by Canadian law enforcement officials on December 28, 1993.

(3) Defendant voluntarily agreed to be interviewed by Corporal Dunn at the Port Moody Police Department before being taken to the Royal Columbian Hospital for an examination under the Mental Health Act. The interview of defendant was free of coercion at all times. The interview of defendant was reasonable and necessary under the Mental Health Act to determine the accuracy of defendant's assertions and to ascertain whether criminal liability might exist concerning defendant's assertions that he had killed someone in Spokane, Washington. Defendant's

interview and detention was not so lengthy as to make his detention by police unlawful.

(4) The Court finds that Justice Gill of the Canadian Court, in her decision at defendant's extradition hearing upholding defendant's detention and the voluntariness of defendant's statements to Canadian police under Canadian law, has great persuasive effect. The Court does not find that the doctrine of collateral estoppel applies to her findings concerning the admission of defendant's arrest and statements to Canadian officers under Canadian law.

(5) The Court finds that no agency relationship existed at the time defendant's statements were made to Canadian police officers between the Port Moody Police Department and the Spokane Police Department on December 28, 1993. In the absence of such an agency relationship, American constitutional principles need not be applied to determine the legality of defendant's detention and interview by Canadian authorities beyond an inquiry as to whether the statements obtained were coerced. The Court has already determined that they were not coerced.

III.

John Medlock's motion to suppress statements made to American law enforcement officials on December 30,

1993, and any evidence obtained therefrom is denied for the following reasons:

(1) Defendant was adequately advised of his constitutional rights under Miranda v. U.S., and freely and voluntarily waived those rights before being interviewed by Detectives Giese and Peterson.

(2) As Mr. Medlock was not advised of the fact he had been charged with murder in Spokane, Washington, he could not and did not waive his right under the Sixth Amendment of the U.S. Constitution and Article I, Section 22 of the Washington State Constitution to post-charge representation by counsel during questioning by government authorities. Further, the Court is of the opinion there is currently no body of case law which specifically requires that a defendant be advised that formal charges have been filed prior to post-charge questioning under the Sixth Amendment or Article I, Section 22 of the Washington State Constitution. Therefore, this Court finds that the Spokane police detectives were not required to inform defendant he had been formally charged with first degree murder prior to questioning him December 30, 1993.

Now, therefore, defendant's motion to suppress statements made to American law enforcement officials on December 30, 1993, and any evidence obtained therefrom is denied.

IV.

The Court denies defendant's motion to suppress defendant's statement regarding the predicate felony of robbery on corpus delicti grounds.

The corpus delicti rule requires that the statements show some evidence of the existence of a crime independent of one's confession to support the conviction. Sufficient independent evidence exists which would tend to establish the trustworthiness of the statements offered by him. As his statements have been rendered trustworthy through corroboration independent of his admission his confession may be used to establish the corpus delicti herein.

Now, therefore, defendant's motion to suppress defendant's statement regarding the predicate felony of robbery on corpus delicti grounds is denied.

V.

Defendant's motion to dismiss the amended information is denied for the following reasons:

(1) Neither count of the amended information alleges the essential elements of the predicate felony of robbery in the first degree (Count I), or assault in the second degree (Count II), nor does either count allege facts of the specific offense with which the defendant is charged.

The Court finds that the amended information charging the defendant with first degree felony murder and

in the alternative with second degree felony murder adequately apprises the defendant of each and every element of the crimes as required by law. As such the charges do not violate the notice provisions of the Sixth Amendment, nor the due process clause of the Fourteenth Amendment, and defendant's motion to dismiss the information is therefore denied.

Now, therefore, defendant's motion to dismiss the amended information is denied.

VI.

The Court incorporates into its findings of fact and conclusions of law its oral ruling of May 10. 1995.

DATED this 28 day of September, 1995.

JAMES M. MURPHY
SUPERIOR COURT JUDGE